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NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

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Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Proposed Rulemaking-CG Docket No. 02-278, FCC 03-62

Ladies and Gentlemen:

The NATIONAL ASSOCIATION of REALTORS® (NAR) appreciates the opportunity to comment on the Federal Communication Commission's (FCC) Further Notice of Proposed Rulemaking on the Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991.

NAR's concern with the implementation of a National Do Not Call Registry, as advocated to the Federal Trade Commission (FTC) during their rulemaking process was the removal of the current exemption in the Telemarketing Sales Rule (TSR), 16 CFR § 310.6(c) for "calls made calls made in which the sale of a service or good is not completed until after a face-to-face presentation." We argued and still maintain that the elimination of the exemption would have a potentially dramatic impact on real estate professionals, particularly to the many modest sized real estate brokerage firms.

While the Federal Trade Commission (FTC) removed this exemption in its final rule, the FCC has independent authority to establish an exemption for "local telephone solicitations" in any rules it promulgates in the implementation of the TCPA. This authority is found in 47 U.S.C. §227 (c) (1) (c), in which the FCC when initiating a rulemaking proceeding shall:

-(c) consider whether different methods and procedures may apply for local telephone solicitations, such as local telephone solicitations of small businesses or holders of second-class mail permits.

Real estate brokerage is an inherently local activity in which real estate professionals generally provide services to consumers in close geographic proximity to the locations of the real estate firm. For that reason, most telephone marketing activities by real estate professionals are directed to persons or entities in the same area, do not result in a sale until after meeting

personally with the consumer, and therefore should not be treated the same as large centrally based telemarketing companies. The "face to face" exemption of the current FTC rule meets the needs of this local telephone activity. Therefore, we ask that if you move forward with a rule to establish a national registry, you include an exemption for "local calls" or "calls made in which the sale of a service or good is not completed until after a face-to-face presentation."

In the absence of an express exemption for this limited sales activity, NAR recommends that you do not adopt a national do not call registry. The Do-Not-Call Act requires the FCC to consult with the FTC to maximize consistency with its rules. To that end, it would be duplicative and risk creating conflict that may negatively impact small businesses such as real estate brokerages if the proper balance is not achieved between the two rules. Instead, the FCC should defer to the FTC rules. Of critical importance to NAR is that the FCC recognizes the limited applicability of the FTC rules to interstate calls. This is an extremely important provision to our members and failure of the FCC to also narrowly tailor its rules to apply in a similar fashion to only interstate calling practices would create tremendous disruption.

The following language taken from the FTC's final rule emphasizes this provision:

Transactions subject to the Commission's amended Rule (and thus subject to the national "do-not-call" registry) are those that fall within the definition of "telemarketing" i.e. a plan, program or campaign which is conducted to induce the purchase of goods and services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. "... Furthermore it is unlikely that the majority of real estate agents conduct campaigns of outbound calls to solicit potential customers who live out of state. Most of the outbound solicitation calls made by real estate agents are probably intrastate calls that would be excluded from the Rules' coverage.

I thank you for the opportunity to submit these recommendations and we look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "David Lereah", with a stylized, flowing script.

David Lereah
Senior Vice President